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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,162	02/14/2001	John A. Kupke	A34431	8337

21003 7590 06/04/2003

BAKER & BOTTS  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER
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POPOVICS, ROBERT J

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 06/04/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

A314

# Office Action Summary

Application No.  
09/782,162

Applicant(s)  
Kupke

Examiner  
Popovics

Group Art Unit  
1724

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 3/24/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-7 AND 9-13 is/are pending in the application.
- ☐ Of the above claim(s) 9-13 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-7 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tharp (4,842,732). See diffuser plate 82. Anchor bolts 84 are seen to meet the limitation of a “rod.” Regarding claim 6, see column 9, line 5.
2. Claims 1,4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferri (4,882,053). See Figure 2 for example.

### *Response to Arguments*

3. Applicant's arguments filed March 24, 2003 have been fully considered but they are not persuasive. With respect to the rejection under Tharp, Applicant has argued ***“Thus, among other things, the instant invention as claimed, requires a porous filter plate which supports a granular media during filtration.”*** The claim under consideration is an apparatus claim. Applicant has not specified granular media as an element of the module, nor has he drafted the claim so that it is limited to traveling bridge filters. The recitation ***“which supports a granular media during filtration”*** is a recitation of intended use. Accordingly, if the applied reference can perform the stated intended use, then it is seen to meet the limitation of the claim. The Tharp structure is capable of performing the stated function. With respect to Tharp's porous “diffuser” plate, Applicant has failed to identify how the claimed “filter” plate differs from Tharp's

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“diffuser” plate. Both are porous plates, with any present difference boiling down to ***“functional labeling.”*** With respect to the rejection under the Ferri reference, Applicant has argued that ***“the instant claimed invention requires a filtration module which is replaceable as a unit.”***

Applicant goes on to argue that ***“The Ferri reference, however, does not disclose or suggest that an entire filtration module, including the walls, a connection element therebetween, and a porous filter plate, could or should be replaceable and insertable between adjacent cell dividers as a unit, as recited in claim 1.”*** While it could be understood how such a limitation might have significance in, say, a ***“method of retrofitting or replacing,”*** It is unclear how Applicant intends the **apparatus** claims presently under consideration to be limited by the concept of ***“replaceable as a unit.”*** Arguments pertaining to portability and separability are not normally found to be persuasive. See MPEP section 2144.04V.

**A. Making Portable**

In re Lindberg, 194 F.2d 732, 93 USPQ 23 (CCPA 1952) (Fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results.).

**C. Making Separable**

In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is “press fitted” and therefore not manually removable. The court held that “if it were considered desirable for any reason to obtain access to the end of [the prior art’s] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.”).

***Response to Amendment***

4. Applicant is requested to cancel the non-elected claims with any response that may be filed.

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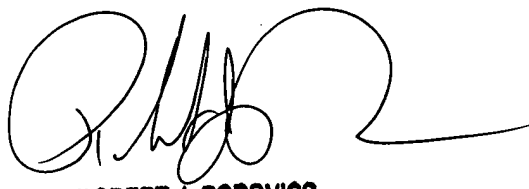
*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Popovics whose telephone number is (703) 308-0684.

RJP  
June 2, 2003



**ROBERT J. POPOVICS**  
**PRIMARY EXAMINER**